# DISPUTATIO INAUGURALIS
## *De*
# IURE AUSTREGARUM,
*Sive*

PRIVILEGIATARVM STATVum Sacri Romani Imperij inſtantiarum, Foro Competente, eorundemq; Iuriſdictione, cum annexis aliquot poſitionibus miſcellaneis, ex jure Civili, Canonico & Feudali excerptis,

*QVAM*

*Adſpirante [illegible]*

Ex decreto & auctoritate

*Magnifici & Ampliſſimi [illegible] ordinis in inclyta Academia Iulia*

PRAESIDE

DN. IOANNE STVCKIO IC. ejuſdem Academiæ Iuliæ pro tempore Prorectore Magnifico, ut & Ordinario ac Facultatis Iuridicæ Decano & Promotore, necnon Sereniſſ. ac Potentiſſ. Brunſuicenſium Ducis Conſiliario, ejuſq; Dicaſterii Guelſici Adſeſſore, &c.

*Pro conſequendis in utroq; jure, Privilegiis & Honoribus Doctoralibus*

Publicæ cenſuræ committit

HENRICUS IUSTUS Pful Minda Gueſtphalus,

*Ad diem 26. Maij.*

HELMAESTADI
Typis heredum Iacobi Lucij, Anno

M. DC. XXI.

[illegible]

*Magnifico, Ampliſſimo, Clariſſimo*
*Viro*

DN. IOANNI Vogel IC.

*Reverendiſſimi, Illuſtriſſimi, Celſiſſimiq; Principis ac Domini, Dn.*

CHRISTIANI, EPISCOPI MINdenſis, Duci Brunſuic. [illegible]

[illegible]

DN. ANTONIO BVLLÆO
I. V. D.

Eiuſdem Principis Conſiliario prudentiſſimo doctiſſimoq; &c.

*[illegible]*

Hanc Diſputationem [illegible]

[illegible]

[illegible] Iuſtus Wol[illegible]

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*CHRISTO AUSPICE ET*
*DIRECTORE.*

# THESIS I.

ETſi ſacri Romani Imperij Proceres, Imperio Romano immediatè ſubjecti ſint, ac proinde nullum agnoſcant judicem mediatum: ne tamen hoc eam deterioris cenſerentur conditionis, quam Imperio mediatè ſubjecti, qui plures habent inſtantias, quibus [illegible] urgere, [illegible] omiſſa vel amiſſa ſupplere, vel recuperare poſſunt, conceſſum eſt his privilegium, cujus beneficio non ſtatim in prima inſtantia judicem habent ſuum immediatum, ſed eum quem è ſuo ordine judicem ſibi eligunt.

## II.

Privilegium hoc Ius AUSTREGARUM vocatur à verbo Außtragen, quod Germanis idem quod cauſam in jure perſequi die Sache mit Recht außtragen ſignificat *Ordin. Cameral. part. 2. tit. 2. & ſeqq.*

## III.

Conſtituitur autem hoc privilegium diverſimodè pro diverſitate ſtatuum & immediatorum ordine, qui tripartitus. Primus Electorum, Principum & Principali dignitate illuſtrium, Clericorum & Laicorum Churfürſten / Fürſten / Fürſtmeſſigen 2c. Secundus Prælatorum, Comitum, Baronum & Nobilium immediatorum. Ter-


tius

tios Civitatum Imperialium eſt. Vide [illegible]
*[illegible]*

[illegible] Auſtriacarum [illegible] indi-
[illegible] Pri-
mo Ordine, [illegible] nullus
dubito. Hic enim [illegible] in
ſummo [illegible]
[illegible]
[illegible]
[illegible]
[illegible]

Neque Privilegium hoc Auſtriacorum ſolum [illegible]
[illegible] ſanguine, hoc Privilegium [illegible]
Principatum quo poſſidet, [illegible]
[illegible]

VI.

[illegible] Princeps non [illegible]
[illegible]
[illegible]
[illegible]

VII.

De capitulo Cathedrali Eccleſiæ [illegible]
[illegible]
[illegible]
[illegible]
[illegible] in Cancellariam [illegible]
[illegible] habere [illegible]
[illegible]
[illegible] *[illegible]*.

Quæ-

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## IIX.

Quæritur quoq; [illegible] hoc primæ inſtantiæ privi-
legio [illegible] in Aula Cæſarea [illegible]
[illegible] Et non poſſe [illegible] Nam hoc privile-
gium [illegible] compertu [illegible] in-
[illegible]
[illegible] vel expreſſa Imperatoris Con-
[illegible] in Aula
Cæſarea [illegible] Ordin. Cam. [illegible] Wie
[illegible] fordern ſol-
[illegible]
[illegible]
[illegible]

## IX.

[illegible] Ca-
[illegible]
[illegible] convenire non poſſunt [illegible]
[illegible] Imperatori [illegible]
[illegible]
[illegible] privilegium Au-
[illegible] Quod [illegible] in perſonis in Or-
[illegible]
[illegible] Imperator non poteſt. Deinde [illegible]
[illegible] Aulam Cæſaream [illegible]
[illegible] ne videlicet [illegible]
[illegible] quam [illegible]
[illegible]
[illegible]
[illegible]
[illegible]

## X.

De Secundo Ordine, [illegible]
[illegible]



ſol

[illegible] Ordinis hominibus quis conveniatur, quod Jus Auſtregarum obtineat, clarè conſtat ex *tit. 3. & 5. d. part. 2. Ord. Cam.*

XI.

Sed quid ſtatuendum, ſi Prælati, Comites, Barones & Nobiles à Civitatibus, Collegiis aut communitatibus mediatè vel immediatè Imperio ſubjectis, vel à privatis cujuſcunq; conditionis, tàm ſubditis quam non ſubditis conveniantur? Eo in caſu, ſtatim privilegium primam inſtantiam [illegible] & directo eos in Cameram conveniri debere, [illegible] cum *Frid. d. lib. cap. [illegible]* [illegible]

XII.

Cujus deciſionis ratio eſt [illegible], quod [illegible] *membris & [illegible]* [illegible] tamen expreſſè & ex profeſſo de privilegio primæ inſtantiæ [illegible] competentia [illegible] Jus Auſtregarum, [illegible] Jus ſingulare & [illegible] quodam [illegible] juris communis regulis exorbitans [illegible] nam habeat interpretationem, [illegible] extendi & porrigi non debeat. *arg. §. ſed quod principi placuit. Inſt. de jur. N. G. & C.* [illegible]

XIII.

At Tertius Ordo, qui eſt Civitatum Imperialium, quamvis ſtatus Imperii ſit, tamen privilegio Auſtregarum non gaudet: cum enim uti dictum, Jus Auſtregarum ſit planè exorbitans à juris communis regulis, & privilegio ſtatibus Imperii Romani indultum [illegible], nemini cenſetur competere, niſi cui expreſſè Imperatoris Conſtitutione tributum eſt. *l. 1. ff. de Conſt. princip. & arg. l. 14. ff. de ll.*

14. Nec

XIV.

[illegible] inter Reichsſtädte [illegible] [illegible] in Camera [illegible] [illegible] pro reliquis [illegible] [illegible] Si [illegible] Imperator hoc [illegible] procul dubio [illegible] idem indulſiſſet privilegium, tacito ſilentio non præteriiſſet. Videatur Rut- [illegible]

XV.

[illegible] Civitates, quæ [illegible] [illegible] habent [illegible] [illegible] [illegible] [illegible] [illegible]

XVI.

[illegible] quod hic Auſtregarum, ut & id quod Civitates [illegible] [illegible] [illegible] [illegible] Elector & Princeps [illegible] Illuſtris, contra Principem [illegible] comprehenſam [illegible] [illegible] cum aperiri cogatur, ſimulq; [illegible] [illegible]

XVII.

[illegible]

ſiaſticos, partim ſeculares, ex diverſis familijs oriundos nominet, ex quibus quatuor Principibus, alter inter quatuor [illegible] eliget unum, qui [illegible] ſacri Romani Imperij Commiſſarius appellatur, & quem in-vitus ſuſcipere judicandi officium tenetur, niſi excu-ſationis cauſas habeat graviſſimas de quibus *in ſum. Ord. part. 2. tit. 2.*

XIIX.

Quid vero ſi Princeps reus, ſeu ſemel requiſitus, in-tra prædictum tempus Principes ſecundum ordinatio-nem non nominat, vel alio modo ordinationi non ſa-tisfecerit, unum forte [illegible] nominando? Et eo caſu, [illegible] electo-re requiſito [illegible] neceſſitate, [illegible] cauſam ad Cameram devolvi, [illegible] hanc ſupplicanti de legitima requiſitione [illegible] proceſſus & citatio decernantur. *Ord. Cam. part. [illegible] lib. 1. obſ. [illegible] Myns. cent. 1. obſ. [illegible] Frid. lib. [illegible]*

XIX.

Electore autem ſeu Principe [illegible] de-ponente vel præmortuo, ſive ante, ſive poſt litis conteſta-tionem, ex reliquis [illegible] actor [illegible] ſurrogabit, qui eadem, quâ prior, ratione [illegible] peractis non deductis perſequendo procedit. *Ord. Cam. tit. 2. §.* darauff ſoll der. Frid. *d. lib. 1. c. 16. n. 3.*

XX.

Hodie tamen judicium cœptum coram [illegible] Principe, qui officium ſuum depoſuit, ſi [illegible] continuari ſolet, idq; ut plurimum, [illegible] Vult. *ad tit. C. ubi Senat. & Clariſſ. [illegible]*

XXI.

Quandoque judicium exercetur, in Principe elect. Iudi-

ſuſpecti territorio, civitate litigantibus deſignata, ubi ipſe Princeps, cauſam audiat, adhibitis in conſilium ſuis conſiliarijs. Vult. *d.loc.Ord.Cam.part.2.tit.2.§.1.*

XXII.

Quod ſi ſecundi ordinis ſtatus quidam, puta Prælatus, Comes, Baro, aut Nobilis immediatè Imperio ſubjectus, vel civitas Imperialis, vel etiam privatus quidam, judicio convenire velit Principem aliquem, ipſius eſt requirere reum, ut per ſuos Conſiliarios, controverſiam dijudicari curet. Qui ita requiſitus intra quatuor hebdomadas, actori ſuis ſumptibus, judicium novem conſiliariorum non ſuſpectorum unà cum citatione decernat, quorum quinque Nobiles & quatuor JCtorum ſint ordinis, quibus cauſæ cognitionem controverſiæq; dijudicationem, remiſſo illis quoad libertatem, ex æquo & bono judicandi, omni juramento & fidelitate quâ alias ipſi ſunt obligati, demandet. *part.2.Ord.Cam.tit.2.*

XXIII.

Ex his autem Novem illis conſiliarijs, Princeps conventus, judicem eligere debet, qui præſente actore, ejuſdemve procuratore, cæteros octo conſiliarios, & ex illis etiam Senior, judicem Sacramento adſtringat, quod in negocio ſibi demandato, bonâ fide candidè abſque fraude & dolo, ſecundum narrata utriuſq; nec non æquitatem & jura pronuntiare & judicare, nec in alterutrius odium, vel gratiam à vera juſtitiæ via deflectere velit. *Ord.Cam.d.part.2.tit.2.§.* Erſtlich Prælaten.

XXIV.

Si etiam forte actori non conſultum videbitur, tot conſiliariorum judicio cauſam committere, in ipſius arbitrio eſt, intra terminum præſcriptum ſeptem aut quin-

que, eligere coram quibus cauſa cognitio & diſ[illegible] expediatur. [illegible] Zubern.

[illegible]

[illegible] competere. [illegible]

XXVI.

Inſuper poteſt Princeps [illegible] cipes, [illegible] ſuſpectos [illegible] [illegible] [illegible] jus in cauſa procedat. [illegible]

XXVII.

[illegible] Principi [illegible]

XXVIII.

Sed & per [illegible] [illegible] [illegible] Communitas [illegible] [illegible] cognitionem [illegible]

XXIX.

Quo [illegible] non competens erit [illegible]

XXX.

[illegible] [illegible] [illegible] [illegible] duobus [illegible]

XXXI.

[illegible] quamquam [illegible]



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non ſit, rationem tamen ſi ſpectemus, forum competens eſſe videtur territorium Principis conventi. Vult. *ad l. 1. n. 89. C. d. tit.*

XXXII.

Neque hoc actori denegatum, [illegible] ipſe & reus duos non ſuſpectos gravitate & ſapientia præſtantes viros eligant, coram quibus quatuor in cauſa procedantur, qui ſi diſſentiant, Ius habent ex conſenſu partium optandi quintum einen Obman/ & ſi neq; ſuper illo quinto optando conveniant, ad Imperatorem, vel ſi Imperator non adſit, ad Regem Romanum referatur, ut is partibus arbitrum non ſuſpectum conſtituat. *d. part. 2. tit. 4. §.* Zum Sechſten.

XXXIII.

Actor præterea ex Principis rei conſiliariis quinque ſeligere poteſt, qui controverſiam [illegible] ſua ſententia dirimant: qui ſi forſan tot conſiliarios in ſua Aula non habeat, actor ex rei Officiarijs, Præfectis, Vaſallis & Nobilibus defectum impleat. *d. tit. §.* Zum Siebenden.

XXXIV.

Denique Electori ſeu Principi accuſato conceſſum eſt, novem ex conſiliariis ſuis, quorum quinq; ſint equeſtris ordinis, nominare, coram quibus merita cauſæ [illegible]: ſtatuit pars utraq; quatuor, & poſt examinationem teſtium rotuliq; publicationem, duo & non plura producta ſingulis quaternis von vier Wochen zu vier Wochen/ a die exhibiti prioris ſcripti proximis duplicata exhibeat & concludat; & ſi quid novi in ultimo ſcripto à reo in actoris præjudicium objiciatur, id non attendatur. *part. 2. d. tit. 4. §.* Zum Achten.

XXXV.

In his tribus poſterioribus vijs ſeu modis, quamvis

io ordinatione, nullus locus expreſsè ſit conſtitutus, [illegible] vel tamen [illegible] competens [illegible] dico.

XXXVI.

Poſt hæc [illegible] cum ſubditis vel principalibus [illegible] ſubiectos judicio [illegible] velis. Quæritur [illegible] coram Auſtregis vel ſummo Prætorio [illegible]. Atq; poſt longam altercationem [illegible] deciſum eſſe, Principem debere illos in Camera convenire, niſi aliter ſit de conſuetudine vel ſingulari privilegio [illegible] Gail. [illegible]

XXXVII.

Quibus [illegible] conſequens eſt, ut videamus de [illegible] Auſtregarum ſecundi ordinis. Ubi notandum, quod cum Comites, Barones & Nobiles [illegible] Principalibus vel Principali dignitate Illuſtribus conveniuntur, [illegible] prima eſt quod Princeps [illegible] Principum ordine Commiſſarium [illegible], [illegible] à domini [illegible] impetrare debeat [illegible] procedatur. *Ord. Cam.* [illegible]

XXXVIII.

[illegible] ut Actor à reo convento requirat, ut [illegible] Principali dignitate [illegible]

XXXIX.

[illegible] ſit illa [illegible]

pre

per ſontem competens eſt territorium Principis electi ju- [illegible]

XL.

Quod ſi à ſui ſimilibus ſecundi [illegible] inis, perſonæ con- veniantur, puta à Prælatis Comitibus [illegible] duæ viæ [illegible] Quarum prima eſt ut reus actori petenti tres Principes non ſuſpe- ctos [illegible] ultra duodecimum [illegible] diſſitos nominet ex quibus actor, quem velit, eligat coram quo vigore ordinationis [illegible] zum dritten daß der Churfürſt [illegible] [illegible]

XLI.

Secundâ eſt, ut actor ab Imperatore commiſſarium [illegible] [illegible] [illegible] ordina- [illegible] [illegible]

XLII.

[illegible] prior ſive poſterior via eligatur, [illegible] ſorum competens erit, territorium [illegible]

XLIII.

Cum jam Status Romani Imperii, prius [illegible] privilegio primæ [illegible] conveniri non poſſet [illegible] Imperio [illegible] [illegible] Et [illegible] in Conſ [illegible] [illegible] communi [illegible] [illegible]

XLIV.

Uti & vice versa illi, qui Status Imperii, coram privilegiato primarum instantiarum iudice conveniunt, etſi mediate Imperio Romano ſubiecti ſint, recte coram Iudice conventi pro [illegible] reconveniuntur. *textu expreſſo* §. So dann die Parteyen *part. 2. Ord. Imp.* [illegible] *cap. 10.*

XLV.

Iis ſecundi tamen delegatorum ordinis modo, primo ſeptimo & octavo ante enumeratis ſpeciale eſt ut reconventio locum non habeat, per ea quae habet [illegible] *cap. 10.*

XLVI.

Proceſſus Auſtregarum intra ſemeſtre, vel ſi prolixioris protractationis cauſa adfuerint, intra annum & [illegible] finiendus eſt. §. dieſelbigen [illegible] *Ord. Cam. part. 2. tit.* [illegible] Frid. *lib. 1. c. 19. n. 5.*

XLVII.

Quibus nunc proximum videmus quanam iurisdictionis ſpecie Iudices Auſtregarum gaudeant. Non deſunt magni nominis ICti, qui multis variisque rationibus evincere conantur illos [illegible] ordinariam, ſed delegatam habere iurisdictionem. Gail. [illegible] Mart. [illegible] *lib. 2.* [illegible] *& ſeqq.* Vide [illegible] *& ſeqq.* Frid. *lib. c.* [illegible] ſed quod facile non admiſerim; ſiquidem iurisdictio, quae a lege [illegible] delegata non eſt, [illegible] *de iuriſdict.* Iudices Auſtregarum a lege [illegible] Imperii eſſe, [illegible] eſt, *per Ord. Cam. part. 2.* [illegible] *& ſeqq.* [illegible] Imperatore iurisdictio iudicum Auſtregarum [illegible], ſed [illegible] confirmatio, [illegible] & [illegible] quamquam [illegible] delegata & non ordinaria eſſet.

 48. Ni-

XLIIX.

Nihil negotii facessunt [illegible] argumenta [illegible] quae [illegible] bus, [illegible] atque sic ex man- [illegible] exercere video in- [illegible] tribuit sed [illegible] *ff. de officio pro-* [illegible] *ff. qui &* [illegible] Nec [illegible] etiam quid mover pro contraria sen- [illegible] ordinarius [illegible] unquam suspectus recusari nequeat: siqui- [illegible] non magis etiam delega- [illegible] apparent [illegible]

XLIX.

[illegible] Ex hoc [illegible] ordinariam habere dicuntur jurisdictionem [illegible] consensione litigantium prorogari possit [illegible] qui jure & privilegio [illegible] non [illegible] judicio & [illegible] competentes habent judices [illegible] judicium [illegible] mihi placet, quando enim [illegible] privilegiati esse, [illegible] & con- [illegible] nec ullo modo [illegible]

L.

[illegible] quaecunque [illegible] de quibus [illegible] de quibus judicium [illegible]

LI.

Ita adjuncta [illegible] constitutione, non attento privilegio Auſtregarum [illegible] in primis inſtantia judicio Cameræ, ſuper conſtitutione pacis publicæ. Auff dem Landfrieden / de quibus [illegible] juribus *in Ord. Cam. part. 2. tit. 9. & §.* So jemands [illegible] etc. *conſt. de pac. publ. de Anno 48,* Si litigantes tamen conſentiant, cauſa coram judicibus Auſtregarum ventilari poteſt, *per §.* und ſoll auch [illegible] *part. 2. tit.* [illegible]

LII.

Sic etiam privilegium Auſtregarum locum non habet, quando quis religionis [illegible] contra placita conſtitutionis von Religionsfrieden, vel in perſona vel in rebus turbatur. Tunc enim ex Conſtitutione Imperii [illegible] in Comitiis Auguſtanis promulgata [illegible] in judicio Cameræ agendum eſt. Gail. *lib.* [illegible] *&* [illegible] Frid. *lib. 1. c. 24.*

LIII.

Idem eſt ſi quis [illegible] *Ord. Cam. part. 2. tit.* [illegible] Gail. [illegible] *cap. 14.* Frid. [illegible]

LIV.

Sic etiam ceſſat Auſtregarum [illegible] in caſu quando [illegible] bona [illegible] vel [illegible] impeditur vel [illegible] & tunc enim ex conſtitutione Imperii de Arreſtis Anno 70. in Comitiis Spirenſibus promulgata in judicio Cameræ eſt experiundum Gail. *in tract. de Arreſtis.*

LV.

Nec [illegible] in caſu attenditur privilegium Auſtregarum, ſi [illegible] aut proceres Imperii, ob [illegible] poſſeſſionem alicujus rei, vel Juriſdictionis vel [illegible]

Pro-

ſubſit præſens armorum periculum. utpote quo caſu ex conſtitutionibus Imperij de litigioſa poſſeſſione in Comitijs VVormatienſibus & Auguſtanis de Anno 21. & anno 45. editis & auctis rectè in Camera agitur. *Ord. Cam. part. 2. tit. 21.* Gail. *lib. 1. obſ. 1. n. 14.*

LVI.

Neque etiam, in mandatis ſine clauſula, jus Auſtregarum locum habet, cum enim talia mandata auff die vier Fälle peti ſoleant. 1. Si factum aliquod ſit quod juſtificari non poſſit. 2. Quod damnum irreparabile inferat. 3. Quod utilitatem publicam lædat. 4. Quod moram ferre nequeat. *Ord. Cam. part. 2. tit. 23.*

LVII.

Sed ex l. diffamari, Camera ſtatim propter certam conſtitutionem aditur: modò, qui gravioribus diffamationibus læſus fuerit, Imperio immediatè ſubiectus. *Ord. Cam. part. 2. t. 25.*

LIIX.

Idem obtinet, ſi commiſſiones pro recipiendis teſtibus, ad perpetuam rei memoriam, à perſonis immediatè ſubjectis petantur, illæ enim in Camera, non coram Auſtregis impetrantur, ne videlicet ex moratoria ſecundum ordinationem in requirendo & nominando judice, obſervanda ſolemnitate, periculum eveniat petenti. Gail. *obſ. 93. n. 3.*

LIX.

Sequitur denegatio & protractio Iuſtitiæ, ut quibus caſibus & Cameræ Iuriſdictio fundetur, ita ut cum inferior judex ob denegatam juſtitiam, quo ad illam cauſam juriſdictionem amittat ſuperior judex pro adminiſtranda juſtitia rectè adeatur. *Ord. Cam. part. 2. tit. 1. §. ult.* Gail. *lib. 1. obſ. 24.*

[illegible]

[illegible] [illegible] *[illegible]*

LXI.

Inſuper & cauſæ [illegible] Exemptionis, Seſſionis, Collectarum, [illegible] [illegible] ad Cameram Iudicium pertinent. *[illegible]*

LXII.

Idem eſt in cauſis [illegible] [illegible] immediate Imperio ſubiecti [illegible] [illegible] datio & confirmatio, [illegible] *[illegible]*

LXIII.

Cameræ [illegible] [illegible] [illegible] in Comitiis Auguſtanis [illegible] [illegible] eſt. *Vid. Ord. Cam. part. [illegible]* [illegible] *[illegible]*

LXIV.

[illegible] [illegible] Imperii vel [illegible] [illegible] ad Cameram [illegible] *[illegible]*

LXV.

[illegible] [illegible] & proſcriptorum ad Cameram [illegible] [illegible] [illegible] [illegible] *[illegible]*

LXVI.

[illegible] locum habeat, [illegible]



[illegible]

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partium privilegio primæ inſtantiæ fuerit renuntiatum, quod cuilibet iuri pro ſe introducto renuntiare liceat, *auth. penult. C. de Pact. l. ſi judex 41. de pign.* Gail. *lib. 1. d. obſ. 1. n. 29. obſ. 42.*

LXVII.

De cauſis matrimonialibus, inter perſonas immediatè Imperio ſubjectas, ad quemnam judicem illæ pertineant, quæritur? ſunt qui eas cauſas inter perſonas, quæ aliàs Auſtregarum gaudent privilegio, ad Auſtregarum Iudicium pertinere exiſtimant. *Vt vide ap. Vult. d. loc. n. 49. 50. n. 4.*

LXIIX.

Sed quæ opinio non placet, cùm nec Camera in iſtis cauſis ſit fundata. *Viſitat.* Abſchiedt *de Anno 70.* Petrus Denaiſ. *157.* Cauſæ vero quæ ad Auſtregarum judicium pertinent, per appellationem ad Cameram devolvi poſſunt, ut expreſſe conſtituitur *Ord. Cam. part. 2. tit. 6.* Imo ad hoc ut Auſtregarum judicium locum habeat non ſolam perſona, ſed etiam cauſa talis eſſe debet, quæ immediatè iuriſdictioni Cameræ & Imperio ſubjecta ſit. Reink. *lib. 1. claſ. 1. cap. 11.* Iam verò cauſæ matrimoniales tales non ſunt, ut ne quidem per appellationem, ad Cameram devolvi poſſint. Gail. *d. lib. 1. n. ult.*

LXIX.

Sunt qui ad Imperatoriam Maieſtatem, cauſas matrimoniales pertinere contendunt, ſed nec hæc opinio placet. Nam licet Imperatoria Maieſtas tam de iure divino, quam humano utraq; juriſdictione, tum Eccleſiaſticarum ſeculari polleat, eam tamen ſibi uſurpare noluit nec hodie uſurpat, & ita ex eodem præſuppoſito in cauſis matrimonialibus ſe non intromittit *Rein. d. l.*

LXX.

Distinguendum tamen puto [illegible] qui Pontificem [illegible] vel [illegible] suo iudice ecclesiastico, hi vero quales sunt Augustanae Confessionis, coram suis consiliariis conveniri debent, extra tamen ordinationem Austregarum, ex eo principio quod superiores Iudicem non habentes [illegible] tamen suis consiliariis recte conveniuntur. Gail. [illegible] 4. C. de Iurisd.

LXXI.

Sic nec de causis Feudalibus [illegible] Principatum, Ducatum, & Comitatum [illegible] iudicium [illegible] Imperatoris [illegible]

LXXII.

Sed nec de reliquis [illegible] minoribus [illegible] sunt Austregarum iudices, nam suos speciales [illegible] habent iudices, vt ipsi(n) dominum, vel [illegible]

LXXIII.

Quod si tamen Vasallus, Dominum [illegible] Vasallum neget, Austregis locum [illegible]

LXXIV.

Eadem quaestio [illegible] nam istam, [illegible] Quod de ipsis [illegible] Austregarum, plurimi negant [illegible] iurisdictionem [illegible] admittatur [illegible] dicendum est.

# EX IURE CIVILI.

## POSITIO I.

*Imperator Iuſtinianus, cuius diadema præter religio- nem [illegible] etiam decorauit.* teſt. Leone Nouell. [illegible] *Mulieres omnibus creditoribus mariti, tam Chirographariis quam tacitam hypothecam habentibus præfert* l. ult. C. qui pot. in pign. hab. *in qua ſententia in-* [illegible] *hypothecam habentibus præ-* [illegible] Dd. [illegible] per d. l. ult. [illegible] C. [illegible] Nouell. [illegible]

2 *De ordine & prioritate creditorum* [illegible] *inter Dd.* [illegible] *An creditores hypothecarii,* [illegible] *& in uſuris chirographariis* [illegible] *præferantur? Iniquum* [illegible] *lucro &* [illegible] *hypothecarii de uſuris* [illegible]

·is non obſtantibus, contraria mihi verior videtur l. ... ff. qui pot. in pign. habeant. Negu. in tr. de pign. & hypoth. mem. 2. part. 5.

## EX IVRE CANONICO.

### POSITIO I.

*Firmiſſima iuris regula eſt, ex pacto nudo actionem non oriri, ſed ſolum ex Prætoris edicto exceptionem competere. At iuris Pontificij interpretes licet hoc civili lege probari videantur ſuis tamen decretis omnia pacta actionem producere affirmant: tum quod ſervari pacta pontifices velint.* c. 1. X. de pact. *tum quod inter ſimplicem loquelam & conceptis verbis iuratam promiſſionem differentiam* DEVS *agnoſcat nullam* c. iuramenti 22. q. 5. *Verum hæc & ſimilia tanti momenti non ſunt, ut Iure Civili & Canonico hac in re diſcrepantiam ſtatuamus* l. 2. ... X. de novi oper. nunc. *Nam & Prætor inquit pacta ſervabo* l. Iuriſgent. 7. §. ait Prætor. 7. ff. de pact. *& tamen nulla ex pacto oritur actio; & licet ſimplicem promiſſionem ſervatam minus* DEO *acceptam ſit quam iuramentum, efficaciorem tamen obligationem ex iureiurando naſci ſtatuunt, etiam Patrum decretis nemo dubitat.* c. cum contingat 28. X. de iurejur.

2. *Cum merum Imperium non iure magiſtratus, ſed ſpeciali legis conceſſione competat* l. 1. de off. eius cui mandata eſt. *conſequens eſt, quod hoc alteri mandari non poſſit.* d. l. 1. l. ſolent 6. in pr. l. 11. de offic. procons. *Verum de hoc Canonica maior eſt dubitatio. Canoniſtæ fere omnes*

lae juris cauſas vero Imperij mandari poſſe aſſerunt: quia-quidem, aiunt, eſt cognoſcibile idem & eſt delegabile. Quod in magiſtratibus propriè ſic dictis de pœnæ ſanguinis executione facilè admitto, [illegible] etiam de cæteris Imperij meris partibus c. ult. §. is autem X. de offic. & poteſt. delegati Bachov. ad diſput. Treutl. diſput. 3. thes. 2.

## EX IVRE FEVDALI.

### POSITIO I.

Fridericus & Lotharius Imperatores glorioſiſſimi, conſtitutionibus manifeſtè prohibuerunt, ne feuda abſque Domini conſenſu alienentur. F. tit. 25. & 55. Sed quæritur utrumne Vaſallus de feudo, ſubinfeudare poſſit? Sane id minimè videbatur conſequens ſuperioribus conſtitutionibus. Verum aliter Iure noſtro Feudali receptum, quo ſubinfeudationem permiſſam & non prohibitam eſſe contra [illegible] diſp. 37. ſtatuo text. tit. 34. Feud.

2. Filiofamilias feudum conſtitui poſſe unanimi conſenſu feudiſtæ aſſerunt Borch. c. 5. de Feud. Sonsb. p. 7. n. 6. Verum magni momenti quæſtio ſubor itur an filio, an patri uſusfructus acquiratur? Ita ſtatuunt Nicol. diſp. [illegible] l. 3 lit. D. Sonsb. p. 7. n. 8. ut & alij DD. [illegible] diſtinguuntur, contrariam tamen opinionem [illegible] probabiliorem amplector, dicendo ad eum uſumfructum pertinere cui feudum conſtitutum [illegible]. Borch. d. loc. Vult. de Feud. c. 4. num. 8.